8P/3749

Attorney Docket No.: 09879-003001

#6

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Raudales
Serial No. : 09/293,198
Filed : April 16, 1999
Title : VEGETABLE PRODUCT DRYING

Art Unit : 3749
Examiner : Denise Ferensic

Box RESPONSES
Hon. Assistant Commissioner of Patents
Washington, D.C. 20231

RESPONSE A

Dear Commissioner:

Responsive to the Office Action dated March 17, 2000, patent owner hereby provisionally elects Claims 1-21 and 32-42 for further prosecution in this application should the requirement for restriction be maintained.

The requirement for restriction is respectfully traversed. 35 U.S.C. § 121 reads, "If two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions." Thus, restriction is proper only if the inventions are "independent and distinct." M.P.E.P. headed 802.01, "Meaning of 'Independent', 'Distinct' reads as follows:

> INDEPENDENT
> The term "independent" (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect, for example, (1) species under a genus which species are not usable together as disclosed or (2) process and apparatus incapable of being used in practicing the process.

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Charles Hieken
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DISTINCT

The term "distinct" means that two or more subjects as disclosed are related, for example as combination and part (subcombination) thereof, process and apparatus for its practice, process and product made, etc., but are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE (novel and unobvious) OVER EACH OTHER (though they may each be unpatentable because of the prior art). It will be noted that in this definition the term "related" is used as an alternative for "dependent" in referring to subjects other than independent subjects.

The Examiner has not shown that the claims in each group "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER." Should the requirement for restriction be repeated, the Examiner is respectfully requested to rule that the claims in each Group "ARE PATENTABLE (novel and unobvious) OVER EACH OTHER."

Furthermore, M.P.E.P. 803 directs, "If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct and independent inventions." Manifestly, there is no serious burden on the Examiner to examine all the claims, especially since claims in the different groups have elements in common for which the Examiner must search when examining the claims in each group. For example, from examining claim 22 of Group I calling for a method of drying vegetable product in a dryer comprising placing the vegetable product in a drying chamber, collecting solar energy, transforming the solar energy into heat energy, transferring the heat energy into the drying chamber and exhausting moisture from the drying chamber, the Examiner must search in the same area when searching for claim 1 in Group II calling for a dryer for drying vegetable products comprising, a thermal collector constructed and arranged to convert solar energy into heat energy, a heat transfer system, a housing having a drying chamber, wherein the heat transfer system is in thermal communication with both the thermal collector and the drying chamber such that heat is able to move from the thermal collector to the drying chamber. Still further, each of the claims is relatively short and easy to examine, occupying at most 14 lines.

In a decision dated June 23, 1977, on a petition filed June 13, 1977, Group 1210 Director Alfred L. Leavitt in granting the petition to withdraw the requirement for restriction said:

> Current Office policy is not to require restriction between related inventions when no substantial burden is involved in the examination of all claims in a single application.

And in a decision dated 3 December 1993 on a petition filed March 12, 1993, Group 1100 Deputy Director John Doyle said:

> Restriction was required between (I) method for epitaxial deposition and (II) epitaxially deposited product (Paper No. 4). However, the examiner failed to present any convincing basis for the holding that the inventions as above grouped are distinct. The claimed inventions must be independent or distinct, and the examiner "must provide reasons and/or examples to support conclusions . . .". Further, the field of search for the alleged distinct inventions is seen to be coextensive, hence, no serious burden is seen to be incurred by examination of all pending claims. MPEP 803 under "Criteria For Restriction Between Patentably Distinct Inventions".
> The Petition is GRANTED.

Manifestly, the Examiner must examine common subject matter in each group. It is no serious burden to examine claims 22-31 along with claims 1-21 and 32-42. Accordingly, it is respectfully requested that the requirement for restriction be withdrawn, and all the claims examined on the merits.

Please apply any charges not covered, or any credits, to Deposit Account No. 06-1050, Order No. 09879/003001.

Respectfully submitted,
FISH & RICHARDSON, PC

Date: APR 14 2000

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